

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 637 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MINOR SHAILESH RAMANBHAI DARJI

Versus

BABUSINH SITALSINH THAKORE

Appearance:

MR NITIN M AMIN for Petitioner

MR RR MARSHALL for Respondent No. 3

CORAM : MR.JUSTICE H.R.SHELAT

and

MR.JUSTICE H.H.MEHTA

Date of decision: 04/04/2000

ORAL JUDGEMENT (Per: H.R. Shelat, J.)

This appeal is directed against the judgment and order dated 22nd February 1984 passed by the then learned

Chairman of the Motor Accident Claims Tribunal (Main) at Narol in Motor Accident Claims Petition No. 575 of 1982 on his file awarding compensation of Rs. 46,152/= against the total claim of Rs. 75,000/=.

2. Necessary facts may in brief be stated.

Shaileshbhai Ramanbhai Darji, who was at the relevant time aged about 15 years was going from Chiloda to Gandhinagar with his father on a motor-cycle No. GAC 7811. His father was driving the motor-cycle while he was the pillion-rider. When the motor-cycle reached near Chhagniram & Sons one motor truck bearing No. GTD 6342 emerged from the sideway and collided against the side of the motor-cycle, as a result both the appellant and his father were knocked down seriously injured. The appellant sustained injuries on his face and minor injuries on different parts of his body. The appellant then filed M.A.C.P. No. 575 of 1982 for compensation of Rs. 75,000/= against the respondent No.1 - the driver of the truck, respondent No.2 - the owner of the truck, and respondent No.3 - the insurer of the truck. The Tribunal, considering the evidence before it, awarded in all Rs. 46,152/= by way of compensation to the appellant. The appellant was not satisfied with the award passed. He thought, considering the materials on record that the award for the entire amount he had prayed for ought to have been passed. Hence for getting the additional amount he has preferred this appeal.

3. The learned advocate representing the appellant submits that in all Rs. 28,848/= are disallowed by the Tribunal but he would be confining to the claim of Rs. 25,000/=. The Tribunal has, under the head 'Pain, Shock & Suffering' awarded Rs. 15,000/=. According to the learned advocate, Rs. 10,000/= more ought to have been awarded. Likewise, under the head 'Permanent Partial Disability' the Tribunal ought to have awarded Rs. 45,000/= instead of Rs. 30,000/=. i.e., Rs. 15,000/= more. Under no other head, the appellant is having any grievance. We would, therefore, deal with these two heads only without dwelling upon other heads.

4. As the appellant sustained the injuries, he is entitled to reasonable amount under the head, 'Pain, Shock & Suffering'. We have carefully gone through the evidence of Dr. Rajendra C. Patel examined on behalf of the appellant. The evidence of the doctor reveals that the appellant sustained the injury on the right temporal mendibural joint, as a result the appellant would not be able to open his mouth for more than one centimeter and his such disability would continue life long. The doctor

has also opined that there is no possibility of any further improvement. The appellant would find it difficult to chew & eat hard food. He will have to be rest contented with the soft food or the liquid. It is also the opinion expressed by the doctor that appellant will find difficulty in utterance & speaking clearly. In day to day transactions also he will be experiencing difficulty and that will remain life long. For about 14 days, he was hospitalised and during those 14 days he was experiencing excruciating pain. After being discharged from the hospital the appellant had to constantly remain under the treatment of the doctor which can be discerned from the evidence of the appellant's father who has made it clear before the Tribunal that appellant was at that time also taking the treatment. The evidence was recorded in November 1983. What can be deduced from such evidence is that he had to remain under the medical treatment for about 2 years and during that period also he must be experiencing pain if not severe pain. Because of his such difficulties which have remained life long and which would also cause him a mental stress, he ought have been awarded under the head 'Pain, Shock & Suffering' at least Rs. 25,000/= but in this case he has been awarded only Rs. 15,000/=. The appellant is, therefore, entitled to Rs. 10,000/= more under the head 'Pain, Shock & Suffering'.

5. As per the above discussion, the appellant will have to undergo the difficulty all through out his life in day to day transaction because he would not be able to speak clearly, as a result of which at times he will have to undergo some loss and secondly he will have to take special diet as he is not in a position to chew hard food for which he will have to spend some thing more than the others normally spend. He must, therefore, be awarded reasonable amount under the head 'Permanent Partial Disability' which can be assessed on the basis of his income, but in the case on hand at the time of accident appellant was not earning. At that time he was studying. If the victim is not earning and studying at the time of accident, his notional income has to be assessed considering the facts on the record as to what minimum stage he would have reached to and started to earn what amount. After being graduated he would have at least joined the services as a Clerk and would have started to earn in all Rs. 1,500/=. So on the basis of this amount, 'permanent partial disability has to be assessed. The doctor has assessed the permanent partial disability at 35%, but considering the whole body the same has to be assessed half which would be 18%. The 18% disability on the notional income of Rs. 1,500/= would come to Rs.

270/= per month and per year it would come to Rs. 3,240/=. The same is to be multiplied by adopting a proper multiplier. At the time of accident, the victim was aged 15 years. Ordinary span of life is considered to be 70 years. The appellant will have, therefore, to undergo difficulties for 55 years more. In this case, therefore, multiplier of 15 must be adopted and if the amount which is assessed per year is multiplied by 15, the amount which can be awarded under the head 'Permanent Partial Disability' comes to Rs. 48,600/=. but in the case on hand the appellant claims only Rs. 45,000/= less already awarded. The Court cannot award more than what is prayed for. In this case, therefore, the appellant is entitled to Rs. 15,000/= more under the head 'Permanent Partial Disability' as he has been already awarded Rs. 30,000/= and he does not claim more than Rs. 45,000/= in all. On no other ground, more amounts by way of compensation are prayed for. For the aforesaid reasons, in all, the appellant is, therefore, entitled to the additional amount of Rs. 25,000/= more together with interest.

6. The Tribunal has awarded interest at the rate of 6% p.a. It is the submission on behalf of the appellant that interest at the rate of 12% to 15% may be allowed. At what rate the interest must be awarded is the point that is raised before us. Under Section 171 of the Motor Vehicles Act, it is the discretion of the Tribunal to award the interest and at a particular rate, but the discretion has to be exercised judiciously and not arbitrarily. For judicious exercise of the discretionary powers, the Court must be in tune with the economic policy of the Government regarding the interest. The Court has to therefore while passing the order bear in mind at what rate the nationalised banks pay the interest on the fixed deposits. The rate of interest to be awarded must not therefore be higher than the rate being fixed by the nationalised banks on fixed deposits. At present, the maximum rate of interest is 10.5%. In this case, therefore, it would be proper if the interest is awarded at the rate of 10% on the additional amount.

7. For what we have said hereinabove, the appeal is required to be partly allowed. The same is accordingly allowed. The award passed by the Tribunal is modified to the effect that the respondents shall pay Rs. 25,000/= more than what has been awarded by the Tribunal together with interest thereon at the rate of 10% p.a., from the date of the petition till realisation and shall also pay the costs in proportion within the period of 3 months.

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